Had the court in the principal case recognized the established construction of warranties in policies of insurance as being essentially conditions precedent, and not promises, it must logically have allowed a breach of warranty as a valid defence. Unfortunately, attempting to avoid the imaginary evil of making an infant's contracts binding upon him, the court fell into the real evil of forcing upon the insurer a contract that in fact he did not make.

THE EFFECT OF MERGER UPON MORTGAGE DEBTS. — When the equity of redemption of mortgaged property unites in one person with the legal title, it is said that, unless a contrary intention express or implied is shown, the interests merge, and the mortgage debt is thereby extinguished. 2 WASH., REAL PROP., 4th ed., 196. Without discussing what state of facts are essential to the creation or prevention of merger, the question naturally arises, is extinction of the debt a necessary consequence? A recent Illinois case answers this question positively in the affirmative. The purchaser of an estate subject to a mortgage bought in the note and the mortgage securing it. He then sued upon the note, but was not allowed to recover, on the ground that there had been a merger of interests and that consequently the debt had been extinguished. *Hester* v. *Frary*, 17 Chic. L. J. 45. Although this decision is in accord with the general law, there has been but little discussion of the point. It is common knowledge that the holder of a note secured by a mortgage has two distinct rights, one against the land and the other against the mortgagor; and it is even held that the first may exist when the latter has been barred. *Hanna* v. *Wilson*, 3 Gratt. (Va.) 243. Why, then, may not the personal liability exist without the mortgage security? It is conceived that the solution may be found in the laws of subrogation. When one who is collaterally bound as surety or indorser to pay a mortgage debt pays it, he is subrogated to the rights of the payee. SHELDON, SUBROG., § 3. In the principal case, for example, if there had been no merger of the equitable and legal interests in the security, the defendant on paying the note would have been entitled to hold the mortgage until redemption. The merger, however, is said to prevent the separation of the mortgage interest from the fee in which it has merged. Consequently, if the defendant were to pay the note, he would be left without the security ordinarily incidental to the payment of a mortgage note. To prevent such a result, the debt is said to be extinguished. It is suggested, however, that the debt is not extinguished, but that, the right of foreclosure against the land being gone, the personal liability only up to the value of the premises is wiped out. Without straining the doctrine of merger, this would protect the mortgage creditor in those cases where he chiefly needs protection, *i. e.*, where the value of the premises is less than the amount of the debt. If there has been a merger accompanied by extinguishment of the debt it results that the mortgagee, having prudently supplied two strings to his bow, is forced to rely on one, and that the broken one. See *Dickason* v. *Williams*, 129 Mass. 182. Inasmuch as the defence of merger is in history and nature equitable, it seems that in justice it should be limited in effect to the value of the premises. Had there been foreclosure the debtor would have been personally liable for the amount not covered by the proceeds

of the sale. As in theory merger affects merely the right to foreclose, and not the debt, the liability for that part of the debt not covered by the land should still remain.

INADEQUACY OF CONSIDERATION AS A BAR TO SPECIFIC PERFORMANCE. — The rule that equity follows the law receives an additional exemplification in the general refusal by the courts of equity to allow mere inadequacy of consideration to be set up as a defence to a bill for the specific performance of a contract. As the common law courts will not examine into the adequacy of consideration, so equity will not refuse to enforce a contract because the consideration is inadequate, provided the parties when entering into the agreement stood on an even footing, and the element of fraud was absent. *Coles* v. *Trecothic*, 9 Ves. 234, 246; *Seymour* v. *Delancy*, 3 Cow. (N. Y.) 445. An exception to this general rule is found in contracts for the sale of reversionary interests by heirs. *Playford* v. *Playford*, 4 Hare 546.

A recent case in the United States Circuit Court, however, deals with this question and reaches a somewhat different conclusion. The defendant in consideration of the sum of one dollar to him paid agreed to lease land to the plaintiff for the purpose of drilling for oil and gas. If either were discovered the defendant was to have a certain portion of the product. The plaintiff made no absolute promises and was at liberty to cancel the contract at any time. On the defendant's putting a third party in possession of the premises the plaintiff brought a bill for specific performance, alleging that the leasehold interest was worth over two thousand dollars. One of the grounds for the court's refusal to decree specific performance was that the contract was unconscionable, that "the consideration would be so trifling compared with the value of the leasehold interest, as to shock the moral sense." *Federal Oil Co.* v. *Western Oil Co.*, 112 Fed. Rep. 373. Had the court regarded such disparity between the value of the property and the price paid as almost overwhelming evidence either of fraud or of an intention to make a gift, the decision would have been in accord with generally accepted rules. But inasmuch as there was no intimation of fraud, and as the contract in its very essence was a speculation into which both parties entered with apparently full knowledge of its nature, the opinion of the court seems opposed to the current of authorities.

In favor of the opinion that equity should regard inadequacy of consideration as a ground for refusing specific performance, it may be said that the jurisdiction is purely discretionary and lies in the sound judgment of the court; that the parties cannot demand it as of right. *Gasque* v. *Small*, 2 Strob. Eq. (S. C.) 72, 77. Again it might be said that as common law courts regard a promise under seal as binding from the mere fact of the solemnity attending the making of such promise, so the requirement of valuable consideration, however slight, in a parol contract, exists merely for the sake of the formality which it gives to the transaction and the safeguard it affords against the consequences of rash and thoughtless promises. *Blount* v. *Blount*, 2 Law Repos. (N. C.) 587. As in the former equity will go back of the seal and refuse specific performance where no actual consideration has been given, POM., CONT., § 57, so in the latter, it might be urged, equity should look to see whether